

FILED WITH LRC TIME: <u>1 pm</u> OCT 18 2010 Emily B Caudill REGULATIONS COMPILER
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## STATEMENT OF EMERGENCY

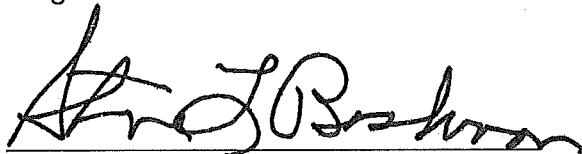
900 KAR 5:020E

(1) This emergency administrative regulation is being promulgated to become compliant with amendments to KRS 214B.450, which requires the cabinet to implement changes to the State Health Plan to develop Certificate of Need requirements for applications for Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities. An ordinary administrative regulation is not sufficient because the changes must be in place on October 13, 2010 when the amendments to KRS 216B.450 are effective.

(2) Failure to enact this administrative regulation on an emergency basis will compromise the Cabinet's ability to comply with the new requirements of KRS 216B.450 as applicants will not be able to submit Certificate of Need Applications for Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities. KRS 216B.450 allows the establishment of Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities to meet the treatment needs of children ages four (4) to twenty-one (21) who have an emotional disability, persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or development disability.

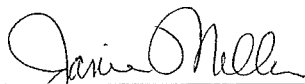
(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.



Steve Beshear  
Governor

\_\_\_\_\_  
Date



Janie Miller, Secretary  
Cabinet for Health and Family Services

10/14/10  
Date

1 Cabinet for Health and Family Services

2 Office of Health Policy

3 (Emergency Amendment)

4 900 KAR 5:020E. State Health Plan for facilities and services.

5 RELATES TO: KRS 216B.010-216B.130

6 STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(27),  
7 216B.040(2)(a)2a.

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires  
9 the cabinet to promulgate an administrative regulation, updated annually, to establish  
10 the State Health Plan. The State Health Plan is a critical element of the certificate of  
11 need process for which the cabinet is given responsibility in KRS Chapter 216B. This  
12 administrative regulation establishes the State Health Plan for facilities and services.

13 Section 1. The 2010-2012 State Health Plan shall be used to:

14 (1) Review a certificate of need application pursuant to KRS 216B.040; and

15 (2) Determine whether a substantial change to a health service has occurred  
16 pursuant to KRS 216B.015(28)(a) and 216B.061(1)(d).

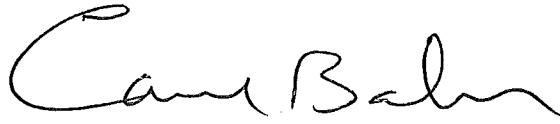
17 Section 2. Incorporation by Reference. (1) The 2010 Update to the 2010-2012 State  
18 Health Plan (October 13, 2010) as amended October 13 [August], 2010 is incorporated  
19 by reference.

20 (2) This material may be inspected, copied, or obtained, subject to applicable  
21 copyright law, at the Office of Health Policy, 275 East Main Street, fourth floor,

1 Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

900 KAR 5:020E

REVIEWED:



Carrie Banahan, Executive Director  
Office of Health Policy

10/11/10  
Date

APPROVED:



Janie Miller, Secretary  
Cabinet for Health and Family Services

10/14/10  
Date

## REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Administrative Regulation Number: 900 KAR 5:020E

Contact Person: Carrie Banahan or Chandra Venettozzi, (502) 564-9589

1. Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.
- (b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared. Changes to the State Health Plan are necessary to provide Certificate of Need application review criteria for Psychiatric Residential Treatment Facility Level I and Psychiatric Residential Treatment Facility Level II. This administrative regulation incorporates the 2010 Update to the 2010 - 2012 State Health Plan by reference to provide the needed review criteria.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS 216B.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation of the State Health Plan is required by KRS 216B.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: The amendment will update the 2010 - 2012 State Health Plan to establish Certificate of Need requirements for Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II.
- (b) The necessity of the amendment to this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. KRS 261B.450 established Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II. The State Health Plan requires revision to incorporate Certificate of Need requirements for these new licensure types.
- (c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(27) which requires that the State Health Plan to provide Certificate of Need requirements.

- (d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.
- 3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.
- 4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will apply to potential Certificate of Need applicants for Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The criteria for applicants proposing to establish Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II are now established. These changes may increase access to these services in the state where access may not be available.
- 5. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
  - (a) Initially: No cost
  - (b) On a continuing basis: No cost
- 6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.
- 7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.
9. TIERING: Is tiering applied? (Explain why or why not)  
Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 900 KAR 5:020E Contact Person: Carrie Banahan or Chandra Venettozzi

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes   X   No       

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.015(27) requires that the State Health Plan be prepared. This administrative regulation incorporates the 2010 Update to the 2010 – 2012 State Health Plan by reference.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenues will be generated to state or local government.
  - (c) How much will it cost to administer this program for the first year? None.
  - (d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.



Revenues (+/-): None  
Expenditures (+/-): None  
Other Explanation: None

**COMMONWEALTH OF KENTUCKY  
CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Health Policy**

**900 KAR 5:020E, State Health Plan for Facilities and Services**

**Summary of Material Incorporated by Reference**

The Update to the 2010 – 2012 State Health Plan is being incorporated by reference. The Update to the 2010 – 2012 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a. The Update to the 2010 – 2012 State Health Plan includes revisions to the following:

- a. The introductory page was changed to reflect the change in dates within the title from the 2010 – 2012 State Health Plan to 2010 Update to the 2010 – 2012 State Health Plan (October 13, 2010) and revision date of October 13, 2010.
- b. The table of contents was changed to reflect page number changes as a result of additional criteria.
- c. Page 18, under the heading “Psychiatric Residential Treatment Facility” the review criteria has been modified to provide new review criteria related to the new Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II.
- c. Various editing and formatting changes have been made throughout the document which did not affect content.
- e. The total number of pages incorporated by reference in the administrative regulation is fifty-seven (57).